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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,800	10/03/2003	Oscar D. Windham	21530.00	9657

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EXAMINER

KIM, TAE JUN

ART UNIT	PAPER NUMBER
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3746

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/677,800

Applicant(s)

WINDHAM, OSCAR D.

Examiner

Ted Kim

Art Unit

3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/03/2003</u>  | 6) <input type="checkbox"/> Other: ____                                     |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 5-8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 6/13/05. Claim 5 was elected but does not read on subspecies A but on subspecies B.
2. Applicant's election with traverse of Species I and Sub-species A in the reply filed on 06/13/2005 is acknowledged. The traversal is on the ground(s) that applicant contends there would be a common field of search and that consideration of related embodiments is an entitlement. This is not found persuasive because while there may be some overlap there is clearly a burden on the search. Clearly, separate embodiments directed to a boat, an airplane, a tank, jet ski, etc. require a burdensome field of search. Moreover, applicant is entitled to consideration of the related embodiments if the generic concept is patentable – not merely if its claimed.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Bevalacqua et al (4,645,140). Bevalacqua et al teach a propulsion system, comprising: a vehicle producing exhaust; a conduit 16 connected to said vehicle, the exhaust flowing through said conduit; and an exhaust altering attachment 42 disposed on said conduit, the attachment having a slit defined therein dimensioned and configured for expelling the exhaust from said conduit in a three dimensional helical pattern (see Fig. 7); said slit comprises an opening defined by a pair of interconnectable side portions; side portions of said slit are contoured to ensure the exhaust is expelled in a three dimensional helical pattern.

5. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Robertson (4,577,462). Robertson teaches a propulsion system, comprising: a vehicle producing exhaust; a conduit connected to said vehicle, the exhaust flowing through said conduit; and an exhaust altering attachment disposed on said conduit, the attachment having a slit 33 defined therein dimensioned and configured for expelling the exhaust 19 from said conduit in a three dimensional helical pattern; said slit comprises an opening defined by a pair of interconnectable side portions; side portions of said slit are contoured to ensure the exhaust is expelled in a three dimensional helical pattern.

6. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Banthin (4,095,417). Banthin teaches a propulsion system, comprising: a vehicle producing exhaust; a conduit connected to said vehicle, the exhaust flowing through said conduit;

and an exhaust altering attachment 22 disposed on said conduit, the attachment having a slit (between 34) defined therein dimensioned and configured for expelling the exhaust from said conduit in a three dimensional helical pattern; said slit comprises an opening defined by a pair of interconnectable side portions 34; side portions of said slit are contoured to ensure the exhaust is expelled in a three dimensional helical pattern.

7. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 2000-16392. JP '392 teaches a propulsion system, comprising: a vehicle producing exhaust; a conduit connected to said vehicle, the exhaust flowing through said conduit; and an exhaust altering attachment 2 or 5 or 17 (depending on which embodiment) disposed on said conduit, the attachment having a slit (either 4 or 6 or 18) defined therein dimensioned and configured for expelling the exhaust from said conduit in a three dimensional helical pattern (note that a 3D helical pattern will inherently be formed by these slits); said slit comprises an opening defined by a pair of interconnectable side portions; side portions of said slit are contoured to ensure the exhaust is expelled in a three dimensional helical pattern.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-4 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2000-16392 in view of JP 8-19551. JP '392 teach various aspects of the claimed invention including the formation of a slit but does not teach the use of an S-shaped slit. JP 8-19551 teach a gas outlet valve 20 with an S-shaped outlet 28, 29 is old and well known in the art. It would have been obvious to one of ordinary skill in the art to replace the outlet slits of JP '392 with an S-shaped slit, in order to provide an equivalent outlet slit configuration. Such a configuration will inherently provide a helical three dimensional helical pattern.


10. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berliner (2,546,293) in view of JP 8-19551. Berliner teaches a propulsion system, comprising: a vehicle producing exhaust; a conduit connected to said vehicle, the exhaust flowing through said conduit; and an exhaust altering attachment 8 disposed on said conduit, the attachment having a slit, said slit comprises an opening defined by a pair of interconnectable side portions. Berliner does not teach the slit comprises a generally S-shaped opening. JP 8-19551 teach a gas outlet valve 20 with an S-shaped outlet 28, 29 is old and well known in the art. It would have been obvious to one of ordinary skill in the art to replace the outlet slits of JP '392 with an S-shaped slit, in order to provide an equivalent outlet slit configuration. Such a configuration will inherently provide a helical three dimensional helical pattern and the side portions of said slit are contoured to ensure the exhaust is expelled in a three dimensional helical pattern.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Ted Kim whose telephone number is 571-272-4829. The Examiner can be reached on regular business hours before 5:00 pm, Monday to Thursday and every other Friday.

The fax numbers for the organization where this application is assigned are 703-872-9306 for Regular faxes and 703-872-9306 for After Final faxes. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Thorpe, can be reached at 571-272-4444.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist of Technology Center 3700, whose telephone number is 703-308-0861. General inquiries can also be directed to the Patents Assistance Center whose telephone number is 800-786-9199. Furthermore, a variety of online resources are available at <http://www.uspto.gov/main/patents.htm>

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Patents Assistance Center	Telephone	800-786-9199